

E(s1) 30th Meeting

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

MINUTES of a Meeting held at  
10 Downing Street on  
THURSDAY 29 OCTOBER 1981 at 10.30 am

PRESENT

The Rt Hon Margaret Thatcher MP  
Prime Minister

The Rt Hon William Whitelaw MP  
Secretary of State for  
the Home Department

The Rt Hon Sir Keith Joseph MP  
Secretary of State for  
Education and Science

The Rt Hon John Nott MP  
Secretary of State for Defence

The Rt Hon Michael Heseltine MP  
Secretary of State for  
the Environment

The Rt Hon John Biffen MP  
Secretary of State for Trade

The Rt Hon Leon Brittan QC MP  
Chief Secretary, Treasury

The Rt Hon Nigel Lawson MP  
Secretary of State for Energy

The Rt Hon Sir Geoffrey Howe QC MP  
Chancellor of the Exchequer

The Rt Hon James Prior MP  
Secretary of State for  
Northern Ireland

The Rt Hon Peter Walker MP  
Minister of Agriculture,  
Fisheries and Food

The Rt Hon Patrick Jenkin MP  
Secretary of State for Industry

The Rt Hon David Howell MP  
Secretary of State for Transport

The Rt Hon Baroness Young  
Chancellor of the Duchy of  
Lancaster

The Rt Hon Norman Tebbit MP  
Secretary of State for Employment

The Rt Hon Cecil Parkinson MP  
Paymaster General

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THE FOLLOWING WERE ALSO PRESENT

The Rt Hon Lord Hailsham  
Lord Chancellor

The Rt Hon George Younger MP  
Secretary of State for Scotland

The Rt Hon Norman Fowler MP  
Secretary of State for  
Social Services

The Rt Hon Lord Mackay of Clashfern QC  
Lord Advocate

Mr Michael Roberts MP  
Parliamentary Under-Secretary  
of State, Welsh Office

SECRETARIAT

Sir Robert Armstrong  
Mr P L Gregson  
Mr D J L Moore

SUBJECT

INDUSTRIAL RELATIONS LEGISLATION

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The Committee considered memoranda by the Secretary of State for Employment (E(81) 103) and by the Lord Chancellor (E(81) 108) on industrial relations legislation. Their discussion and conclusions reached are recorded separately.

Cabinet Office

30 October 1981

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MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

LIMITED CIRCULATION ANNEX

E(81) 30th Meeting Minutes  
THURSDAY 29 OCTOBER 1981 at 10.30 am

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INDUSTRIAL RELATIONS LEGISLATION

The Committee considered a memorandum by the Secretary of State for Employment (E(81) 103) and a memorandum by the Lord Chancellor (E(81) 108) on industrial relations legislation.

THE SECRETARY OF STATE FOR EMPLOYMENT said that, in considering a wide range of suggestions for further legislation on industrial relations to follow-up the Employment Act 1980, he had aimed to formulate proposals which were defensible in principle, would be workable in practice, and would generally be seen to be reasonable. On the closed shop there was a set of proposals designed to provide more protection for individuals and to shift the focus of attention from the employer to the trade unions. On "union labour only" requirements he had thought it right not only to outlaw requirements in contracts and discrimination in seeking tenders or awarding contracts on grounds of union membership or non-membership, but also to render unlawful industrial action which would interfere with the performance of contracts on such grounds; he recognised that this latter provision could provoke industrial conflict, but without it the voiding of "union labour only" provisions in contracts might have little practical effect. On the proposal to bring immunities for trade unions in line with those for individuals, he accepted that this was highly contentious and was likely to provoke strong opposition both from the trade union movement and the Labour Party, partly for historical reasons; it was however indefensible for trade unions to have immunity to perform acts which would be unlawful if done by individuals. On selective dismissal in a strike he had not gone as far as some employers would have wished, but he proposed that an employer should be able to dismiss strikers who refused to return to work after reasonable

notice. On ballots he did not at this stage think it desirable to go beyond an Order under the Employment Act 1980 which would extend the availability of funds to ballots on wage offers.

THE LORD CHANCELLOR said that it was important to avoid legislation which might bring the law into contempt because it was not enforceable or might involve the judiciary in political controversy. It was preferable also to bring forward legislation which would be acceptable to a wide spectrum of opinion and would therefore be less liable to repeal. He was doubtful whether some of the proposals in E(81) 103 met these tests, and he also had some reservations on more detailed legal points which were referred to in E(81) 108. The removal of immunity from the trade unions was likely to provoke a great deal of opposition, but might not in practice do much to alter the balance of bargaining power between employers and unions. If however trade union immunities were to be removed, it was difficult to defend a limitation on the amount of damages which could be awarded against them.

The following points were made in discussion -

a. On the general balance of the proposals in E(81) 103, it was pointed out that, although there was wide support for action on the closed shop and on "union labour only" requirements, which were evident abuses, there was less support for other proposals, such as that on trade union immunities, which might alienate moderate opinion and provoke strong controversy, without having sufficient practical advantages to justify these political consequences, and would make it virtually certain that an incoming Labour Government would repeal not only those particular provisions but the other reforms of industrial relations legislation effected by the present Government. On the other hand excessive trade union power was at the heart of the United Kingdom's economic difficulties; there was growing political pressure for action, not least within the Social Democratic Party; finally the relatively calm current state of industrial relations, which was influenced by the high level of unemployment, provided a favourable opportunity for taking a major step in trade union reform. These considerations suggested that the balance of the proposals in E(81) 103 might be about right,

subject to more careful consideration of their individual merits. It would also be desirable to combine such measures with strong encouragement to employers to take positive steps to improve management/labour relations within their organisations.

b. On the closed shop proposals it could be held to be wrong in principle to provide for a more generous scale of compensation for those dismissed unfairly on closed shop grounds, as opposed to other grounds. On the other hand there was a precedent for this in the more generous compensation introduced by the previous Government for dismissal on grounds of trade union membership or activities; it was also reasonable to include some punitive or exemplary element in the damages, since the closed shop was such a flagrant restriction on individual freedom. There were objections on legal grounds to the proposals for joining trade unions as well as employers in closed shop actions. There would be little incentive for the employee to join the trade union in the action because it would not increase the compensation available. It might also be difficult for the tribunal to assess the relative blameworthiness of the trade union and the employer. An alternative approach might be to provide that trade unions were automatically joined in closed shop actions. One difficulty was that several trade unions were sometimes involved. The proposals for joinder would therefore need to be re-examined and the alternative of automatic joinder, or some variant of it, would need to be considered.

c. On "union labour only" requirements, there were doubts about whether the proposals would be workable. An alternative might be to place a duty on local authorities to place contracts only after fair and open competition. On the other hand it might be better to avoid adding to the list of proposed new legislative requirements for local authorities. It might be preferable to go no further than to render void "union labour only" requirements in contracts, since it was not clear that employers had faced up to the risks involved in dealing with action which interfered with the performance of contracts. A compromise would be to introduce legislation on the lines proposed in E(81) 103 but to provide that it could not take effect until after a

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lapse of two years and thus not in the lifetime of the present Parliament but this would not be easy to defend. There would need to be closer examination of the proposals by the Departments concerned.

d. On the proposal to bring immunities for trade unions in line with those for individuals, the main advantage would be to limit the scope for martyrdom. Although the limitation of damages was unusual, there were precedents for it, for example in the Carriage by Air Act and in the Industrial Relations Act 1971. The possible disadvantages were that it might tend to isolate trade union members further from their responsibilities in relation to industrial disputes, 90 per cent of which were already unofficial, and that it would involve the courts in controversial issues of industrial relations. If action were to be taken on this front, the detail of the proposed legislation would require the most careful examination. In principle action to limit the immunity of trade unions seemed desirable but more evidence was needed, particularly on how the new legislation would work out in practice, before it could be established that the gains would justify the effort. This was another area where it might be preferable to legislate now with a view to bringing the legislation into effect in the lifetime of the next Parliament. Final decisions on the proposal could be taken only when there had been a more detailed analysis of the legal issues and a fuller assessment of the balance of advantages.

e. There was general agreement with the proposals in E(81) 105 about the definition of a trade dispute (subject to further consultation on points of detail between officials of the Department of Trade and the Department of Employment), on selective dismissal in a strike and on ballots.

THE PRIME MINISTER, summing up the discussion, said that most members of the Committee felt that the overall balance of the package of measures in E(81) 105 was about right, subject to further consideration of certain proposals and provided that they were accompanied by a positive policy on improving management/labour relations within companies. The Secretary of State for Employment would consider further, in consultation with the Lord Chancellor and the Law Officers, the proposals for joining unions as well as employees in closed shop actions and in particular whether it might be more effective to provide that trade unions were automatically joined in such actions. There was general support for action on "union

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labour only" requirements in contracts, but the Secretary of State for Employment would re-examine his proposals in consultation with the Lord Chancellor, the Law Officers and the Secretary of State for the Environment to establish whether they would be workable and that there was no better option available for dealing effectively with the problem. Most members of the Committee favoured action to bring immunities for trade unions in line with those for individuals but this proposal would need to be considered again in the light of further advice from the Secretary of State for Employment, in consultation with the Lord Chancellor and the Law Officers, on the difficult legal issues involved, and on how the new legislation would be likely to work in practice; this would enable the Committee to reach a final judgement on whether the measure would be worthwhile.

The Committee -

1. Approved the Secretary of State for Employment's proposals in E(81) 105 on the definition of a trade dispute, on selective dismissal in a strike and on ballots.
2. Agreed that there should be legislation on the closed shop and on "union labour only" requirements, subject to further consideration by the Secretary of State for Employment of the points referred to in the Prime Minister's summing up.
3. Invited the Secretary of State for Employment, in consultation with other Ministers concerned, to look further into the proposal for bringing immunities for trade unions in line with those for individuals in the light of the points referred to in the Prime Minister's summing up, and to report back to the Committee as soon as possible.

Cabinet Office

30 October 1981

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